IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19020 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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NILESH @ NILIO @ NIALO @ NILU KANUBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR VAIBHAV A VYAS for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 25/10/2005

ORAL JUDGMENT

1. The order of detention dated 04.07.2005 is passed by the respondent no.2, detaining the detenue as 'Dangerous Person' as defined under Section 2(c) of the Act in exercise of powers under subsection 2 of Section 3 of

Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as 'the PASA Act'), is challenged by way of the present petition by the detenue on the ground of violative of Articles 14, 19, 21 and 22 of the Constitution of India.

2. The grounds of detention alongwith the order of detention were supplied to the detenue which reveal about the registration of four offences registered against the detenue vide different crime registered numbers. Out of four offences, one is registered with Naroda Police Station, one is registered with Vejalpur Police Station and two others have been registered with Satellite Police Station for the offences punishable under Sections 356, 379 and 114 of Indian Penal Code. The registration of crimes show the antisocial activities of the detenue being indulged into the theft of two

wheelers and in chain snatching incident, causing disturbance to the maintenance of the public order. The detaining authority has also taken into consideration the statements of two witnesses dated 15.05.2005 and 09.06.2005 of two witnesses by which the criminal and antisocial activities of the detenue are mentioned causing disturbance of the public order. As per the said statements, the detenue indulges into usage of abusive language, administering threats by showing weapons and trying to extort money by illegally selling two wheelers or the items, illegally purchased by the detenue. The detaining authority has also taken into consideration other remedies available under ordinary law, which were found inadequate and after considering the fact that for the offences qua registered against the detenue, the detenue is under judicial custody, the subjective

satisfaction was arrived at by the detaining authority to pass the order of detention restraining and preventing the detenue indulging in such criminal and antisocial activities in future.

3. Learned advocate Shri V.A.Vyas for the petitioner detenue, has challenged the order of detention dated 04.07.2005 mainly on two grounds relying upon the decision in the case of **Amrutlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675** about subjective satisfaction of the detaining authority detaining the detenue, even though such detenue is in judicial custody. The recital of usual phrases of detenue preferring bail application and grant of such application by the Competent Court of law and, thereafter again indulge into similar activities, must have

foundation or basis in the backdrop of relevant materials. For arriving at a subjective satisfaction, as stated in Para-4 of the above judgment, ipse dixit of the concerned officer about apprehension of detenue indulging in similar activities on enlargement of the bail is not sufficient, since preferring of bail application and released on bail both are different aspects. In the above circumstances Shri Vyas has submitted that the order of detention is required to be quashed and set aside.

He has also submitted that theft of two wheelers by the detenue by itself cannot be said to have disturbed the even tempo of the public life and gravity and the magnitude of the offence levelled against the detenue cannot be said to result into the disturbance of the public order. In the circumstances Shri Vyas submitted that both these grounds are sufficient to quash and

set aside the order of detention.

4. Mrs. Hansha B. Punani, learned Assistant Government Pleader for the respondent authorities has submitted that time and again the detenue has indulged into theft of two wheelers and even witnesses have deposed that the detenue is a dangerous person and quite often indulge into usage of abusive and threatening language in the public by showing them weapons. In the above circumstances, the satisfaction of the detaining authority that the detenue is a dangerous person is based on sufficient material and do not require any interference by this Court.

5. Considering the rival submissions and on perusal of the records and affidavit in reply filed by the detaining authority, I am inclined to quash and set aside the order of

detention on the ground of disturbance of the public order inasmuch as the registration of crime against detenue qua the theft of two wheelers and the detenue indulging into illegal dealing with the sale or purchase of such vehicles by itself and stray incidences of disturbance of law and order, as stated by the witnesses cannot be said to be relevant or credible materials, for constituting the subjective satisfaction of detaining authority branding the detenue as “dangerous person” as defined under Section 2(c) of the ACT. The above offences, at the most can be said to be disturbing the law and order only and it cannot have magnitude or gravity of disturbing the public order. The following decisions of the Apex Court, amply make it clear the position of laws in this regard. In view of a decision of the Apex Court in the case of Darpan Kumar Sharma Vs. State of

T.N., reported in 2003 (2) SCC 313, particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of “goonda” the acts prejudicial to public order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very

well explained in the decision reported in 2000 (4) GLR 3623 in the case of Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors. as under:-

> " Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

The above circumstances and the judgments are clearly applicable in the present case, the order of detention is quashed and set aside as the same is unjust,

unconstitutional, illegal and violative of Article 21 and 22 of the Constitution of India.

6. For the reasons recorded hereinabove, the order of detention dated 04.07.2005 is hereby quashed and set aside and the detenue Nilesh @ Nilio @ Nailo @ Nilu Kanubhai Patel, is ordered to be set at liberty forthwith if not required in any other offence by any other authority.

7. Rule is made absolute with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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